

TO: Mail Stop 8 Director of the U.S. Patent & Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
---	---

In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
filed in the U.S. District Court Northern District of California on the following ☐ Patents or ☒ Trademarks:

DOCKET NO. CV 11-01637 PSG	DATE FILED 4/4/2011	U.S. DISTRICT COURT 280 South First Street, Rm 2112, San Jose, CA 95113
PLAINTIFF BARE ESCENTUALS BEAUTY		DEFENDANT EUROPEAN BARE INC.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 3,037,101		SEE ATTACHED COMPLAINT
2 1,539,966		
3 3,377,239		
4 3,377,301		
5 3,377,232		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 2,321,607		
2 3,377,240		
3 2,895,884		
4 3,236,902		
5 2,848,678		

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK Richard W. Wieking	(BY) DEPUTY CLERK Betty Walton	DATE April 6, 2011
-----------------------------	-----------------------------------	-----------------------

Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon termination of action, mail this copy to Commissioner
Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy

Andrew P. Bridges (SBN: 122761)
abridges@winston.com
Jennifer A. Golinveaux (SBN: 203056)
jgolinveaux@winston.com
Elisabeth A. Derby (SBN: 267421)
bderby@winston.com
WINSTON & STRAWN LLP
101 California Street
San Francisco, CA 94111-5894
Telephone: 415-591-1000
Facsimile: 415-591-1400

Attorneys for Plaintiff
BARE ESSENTUALS BEAUTY, INC.

E-filing

ORIGINAL
FILED
APR - 4 2011
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
PSG

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BARE ESSENTUALS BEAUTY, INC, a
Delaware corporation,

Plaintiff,

vs.

EUROPEAN BARE, INC. a Florida
Corporation, and

COLLEEN LEFFLER aka COLLEEN LORAE,
dba VILLAGE BOUTIQUE, an individual,

Defendants.

CV 11

Case No.

1637

COMPLAINT FOR TRADEMARK
INFRINGEMENT AND DILUTION AND
UNFAIR COMPETITION

DEMAND FOR JURY TRIAL

INTRODUCTION

This action for trademark infringement, dilution, and unfair competition arises from Defendants' use of a brand for mineral based make-up, EUROPEAN BARE MINERALS, that incorporates Plaintiff Bare Escentuals' market leading BAREMINERALS brand for mineral based make-up. Defendants registered the mark EUROPEAN BARE with the U.S. Patent and Trademark Office, but in fact use the marks EUROPEAN BARE MINERALS, or simply BARE MINERALS. Defendants even use photographs of Plaintiff's cosmetics in advertising for Defendants' cosmetics, and sell samples of Plaintiff's product mixed in with Defendants' own product. Defendants' actions are creating confusion in the marketplace. Plaintiff seeks appropriate damages and a narrowly

1 crafted injunction to stop Defendants from using Plaintiff's BAREMINERALS mark and
2 confusingly similar variations and from selling Plaintiff's product.

3 JURISDICTION

4 1. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C.
5 §1121 and 28 U.S.C. §§1331 and 1338 because it arises under the federal Lanham Act and because
6 the state-law claims accompany related and substantial claims under the federal trademark laws.
7 The Court has jurisdiction over the claim for declaratory relief and rectification of the U.S.
8 Trademark Register pursuant to 28 U.S.C. §§ 2201 and 2202, as well as under 15 U.S.C. § 1119.

9 VENUE, INTRADISTRICT ASSIGNMENT

10 2. Venue is proper in this District under 28 U.S.C. §1391(b) because a substantial
11 portion of the events giving rise to the claims for relief stated in this Complaint occurred in this
12 District and because a substantial part of property that is the subject of this action is located in this
13 District. Venue is also proper under 28 U.S.C. §1391(c) as to Defendant European Bare, Inc.
14 because that entity is subject to personal jurisdiction in this District.

15 3. This action is not subject to divisional assignment because the case arises under
16 intellectual property laws.

17 THE PARTIES

18 4. Plaintiff Bare Escentuals Beauty, Inc. ("Bare Escentuals") is a Delaware corporation
19 with its principal place of business in San Francisco, California.

20 5. Bare Escentuals believes, and therefore alleges, that Defendant European Bare, Inc.
21 ("European Bare") is a dissolved Florida corporation with a business address of 779 Cypress Trails
22 Drive, Tarpon Springs, FL 34688. Bare Escentuals believes, and therefore alleges, that Defendant
23 European Bare does substantial business within this District by directing advertising, sales, and
24 shipments to this District.

25 6. Bare Escentuals believes, and therefore alleges, that Defendant Colleen Leffler, aka
26 Colleen LoRae ("Leffler") is a Florida resident with a business address of 779 Cypress Trails Drive,
27 Tarpon Springs, FL 34688. Bare Escentuals believes, and therefore alleges, that Defendant Leffler
28 does business under her own names and under the name "Village Boutique." In addition, Bare

Escentuals believes, and therefore alleges, that Defendant Leffler is the Incorporator, President, Treasurer, and Registered Agent of Defendant European Bare, Inc. Bare Escentuals believes, and therefore alleges, that Defendant Leffler does substantial business within this District by directing advertising, sales, and shipments to this District.

7. Bare Escentuals believes, and therefore alleges, that each of the Defendants named in this Complaint is the agent, employee, successor, or assign of each other Defendant and each of them at all times mentioned in this Complaint were acting within the course and scope of such agency, employment, succession of interest, or assignment.

GENERAL ALLEGATIONS

Bare Escentuals and its Senior BAREMINERALS Brand for Cosmetics

8. Bare Escentuals manufactures and distributes high-quality cosmetic products through a variety of channels. Those channels include high-end third-party retailers such as Sephora, Macy's, Nordstrom's and Ulta; Bare Escentuals' own boutiques; and corresponding websites.

9. Bare Escentuals' products are also widely available in Europe through Bare Escentuals boutiques, and third party distributors and retailers, including Sephora and Selfridges.

10. Bare Escentuals' products have achieved an extraordinary reputation. Bare Escentuals' products have been a leading beauty brand at Sephora and Ulta stores, and they have been the top beauty brand on QVC since 2001. In addition, there are 170 Bare Escentuals boutiques in malls nationwide, with new stores opening frequently.

11. Bare Escentuals is particularly well known as a pioneer in the development, marketing, and sale of mineral-based foundation makeup.

12. Bare Escentuals owns and uses a family of marks based upon the core term "BARE." These marks include, but are not limited to, the trade name and house mark BARE ESCENTUALS, as well as the marks BAREMINERALS, and I.D. | BAREMINERALS.

13. Bare Escentuals' BAREMINERALS branded cosmetic products have received numerous awards and accolades over the years. In 2008, the leading fashion magazine *Elle* awarded an Elle Genius Award for Makeup to Bare Escentuals for one of its BAREMINERALS branded cosmetics. *Glamour*, another leading fashion and beauty magazine, awarded two Glammy Beauty

1 Awards to Bare Escentuals for its BAREMINERALS branded foundation and blush make-up during
2 the same year.

3 14. Bare Escentuals and its predecessors in interest have used the BARE ESCENTUALS
4 mark continuously since at least as early as 1976. The mark has achieved widespread fame. Bare
5 Escentuals has obtained a federal registration for the word mark BARE ESCENTUALS in its
6 characteristic script, Registration No. 3,037,101 dated January 3, 2006, for the following goods:

7 Cosmetic skin creams, lotions and gels, perfumes, essential oils used as
8 cosmetics, body lotions, creams and gels, bath lotions, hair shampoos and
9 hair conditioners, colognes and toilet waters, and cosmetic powders for the
10 skin and eyes.

11 This registration is valid, enforceable, and incontestable under section 15 of the Lanham Act, 15
12 U.S.C. §1065. Exhibit A is a true and correct copy of the current registration certificate.

13 15. Bare Escentuals owns additional federal trademark registrations for the BARE
14 ESCENTUALS mark: Registration Nos. 1,539,966 (dated May 23, 1989); 3,377,232 (dated
15 February 5, 2008); 3,377,239 (dated February 5, 2008); and 3,377,301 (dated February 5, 2008).

16 These marks are valid and enforceable. True and correct copies of the status reports and, where
17 applicable, assignment records from the Patent and Trademark Office website for each additional
18 BARE ESCENTUALS mark are Exhibits B, C, D, and E, respectively, to this Complaint.

19 16. Bare Escentuals and its predecessors in interest have used the BAREMINERALS
20 mark continuously since at least as early as 1993 and have developed strong common-law rights in
21 that brand. The mark has achieved widespread fame. Bare Escentuals has obtained a federal
22 registration for BAREMINERALS, Registration No. 2,321,607, dated February 22, 2000, for the
23 following goods:

24 Cosmetic skin creams, lotions and gels, perfumes, essential oils used as
25 cosmetics, body lotions, creams and gels, bath lotions, hair shampoos and
26 hair conditioners, colognes and toilet waters, and cosmetic powders for the
27 skin and eyes.
28

1 This registration is valid, enforceable, and incontestable under section 15 of the Lanham Act, 15
2 U.S.C. §1065. Exhibit F is a true and correct copy of a status report and assignment record from the
3 United States Patent and Trademark Office website.

4 17. Bare Escentuals also owns federal Registrations Nos. 3,377,302 and 3,377,240, dated
5 February 5, 2008, for the BAREMINERALS marks. These marks are valid and enforceable.
6 Exhibits G and H are true and correct copies of status reports from the Patent and Trademark Office
7 website.

8 18. Bare Escentuals has used its composite I.D. | BAREMINERALS mark since at least
9 as early as December 31, 1995 in connection with a wide variety of cosmetics, makeup, and skin
10 care products and has valid common-law rights in the mark.

11 19. Bare Escentuals has also used the mark MINERAL VEIL since at least as early as
12 December 1995 in connection with cosmetics and holds Registration No. 2,885,884, dated
13 September 21, 2004, for the mark. This mark is valid, enforceable, distinctive, famous, and
14 incontestable under section 15 of the Lanham Act, 15 U.S.C. §1065. Exhibit I is a true and correct
15 copy of a status report and assignment record from the Patent and Trademark Office website.

16 20. Bare Escentuals has common-law rights in all of these marks. For those marks which
17 are registered, ownership of the federal registrations confers upon Bare Escentuals a presumption of
18 validity of the marks and of exclusive rights to use the marks in commerce with respect to the goods
19 and services indicated in the registrations.

20 21. Bare Escentuals' President and CEO Leslie Blodgett is well-known as the public face
21 of Bare Escentuals and has been featured in many of Bare Escentuals' marketing materials.

22 22. Bare Escentuals also distributes a "Get Started Kit," which contains its
23 BAREMINERALS and other products as well as an instructive DVD featuring Leslie Blodgett
24 demonstrating how to use its products. A true and correct image of a Bare Escentuals' instructive
25 DVD is attached as Exhibit J.

26 **Defendants' Infringing Use of Plaintiff's BAREMINERALS Mark**

27 23. Defendants market and distribute cosmetics products including mineral-based
28 foundation makeup under the marks EUROPEAN BARE, EUROPEAN BARE MINERALS and

1 BAREMINERALS among others. Defendants sell their product on their website located at
2 <http://www.myvillageboutique.com>, and on popular shopping websites such as eBay.com and
3 Amazon.com.

4 24. On June 15, 2006, Defendant Leffler filed an application with the Patent and
5 Trademark Office ("PTO") to register the mark EUROPEAN BARE on behalf of Defendant
6 European Bare for cosmetics and related goods based upon claimed use of the mark in commerce
7 since February 12, 2004. The application received serial number 78/908,927. Registration occurred
8 on May 1, 2007 as No. 3,236,902.

9 25. Bare Escentuals believes, and therefore alleges, that Defendants were familiar with
10 Bare Escentuals and its BAREMINERALS mark before filing the application to register the mark
11 EUROPEAN BARE.

12 26. Although Defendants registered only the mark EUROPEAN BARE, Defendants use
13 the marks EUROPEAN BARE MINERALS and BARE MINERALS to market their products. In
14 fact, the required specimen of trademark use Defendants submitted in connection with their
15 EUROPEAN BARE trademark application serial number 78/908,927 shows Defendants' use of the
16 mark EUROPEAN BARE MINERALS. A true and correct copy of this specimen is Exhibit K.
17 Bare Escentuals believes, and therefore alleges, that Defendants strategically applied to register only
18 the words EUROPEAN BARE so that the PTO would not detect and reject their trademark
19 application as confusingly similar to Bare Escentuals' earlier registered BAREMINERALS mark.

20 27. Bare Escentuals believes, and therefore alleges, that Defendants intentionally use the
21 marks EUROPEAN BARE MINERALS and BARE MINERALS to market their products in order
22 to confuse consumers into believing that Defendants' products are associated with Bare Escentuals'
23 BAREMINERALS branded products.

24 28. Defendants' EUROPEAN BARE mark is confusingly similar to Plaintiff's BARE
25 ESCENTUALS and BAREMINERALS marks. Defendants' mark appropriates the core BARE
26 element of Bare Escentuals' marks, adding only the geographically descriptive term EUROPEAN.
27 Because Bare Escentuals' products are widely available in Europe, the addition of the word
28 EUROPEAN is likely to confuse consumers into believing that Defendants' products are merely a

1 European line of Plaintiffs' products.

2 29. Defendants' EUROPEAN BARE MINERALS mark wholly incorporates, and is
3 confusingly similar to, Bare Escentuals' BAREMINERALS mark. The mere addition of the
4 geographically descriptive term EUROPEAN in front of the mark and of a space between the words
5 BARE and MINERALS do not meaningfully distinguish the marks. Because Bare Escentuals'
6 products are widely available in Europe, the addition of the word EUROPEAN is likely to confuse
7 consumers into believing that Defendants' products are merely a European line of Plaintiffs'
8 products.

9 30. Defendants' BARE MINERALS brand is nearly identical to, and confusingly similar
10 to, Bare Escentuals' BAREMINERALS brand. The addition of a space between the words BARE
11 and MINERALS does not meaningfully distinguish the marks. Defendants also advertise a line of
12 products called PURAMINERALS BARE MINERALS or PURAMINERALS BARE, which also
13 fully incorporate Bare Escentual's BAREMINERALS mark. Switching the order of the words
14 BARE and MINERALS again does not meaningfully distinguish the marks. Exhibit O shows true
15 and correct copies of a printout from Defendants' website reflecting Defendants' use of the
16 PURAMINERALS BARE MINERALS mark and a printout of an eBay listing reflecting
17 Defendants' use of the PURAMINERALS BARE mark. Bare Escentuals believes, and therefore
18 alleges, that Defendants created the eBay.com listing.

19 31. Defendants have also infringed Bare Escentuals' federally registered trademark
20 SWIRL, TAP, BUFF, Registration No. 2,848,678. (Exhibit L is a true and correct copy of a status
21 report and assignment record from the PTO website for Plaintiff's Registration No. 2,848,678.) Bare
22 Escentuals and its predecessors in interest have used the SWIRL, TAP, BUFF mark continuously for
23 years, and they have used this mark in connection with their BAREMINERALS branded products.

24 32. Defendants have also used "SWIRL," "TAP," and "BUFF" on their website in all
25 capital letters. Exhibit M is a true and correct copy of a printout of this page of Defendants' website.
26 Defendants' use of Bare Escentuals' SWIRL TAP BUFF mark is likely to confuse consumers further
27 as to the connection between Defendants and Plaintiff.
28

33. Defendants also sell a finishing powder product they have called MINERAL VEIL, SHEER VEIL, and MINERALS SHEER VEIL, which is confusingly similar to Bare Escentuals' MINERAL VEIL mark for finishing powder. Exhibit N is a true and correct copy of a printout from eBay advertising Defendant's MINERALS SHEER VEIL product. Bare Escentuals believes, and therefore alleges, that this web page was created by Defendants.

34. Defendants also advertise, sell, and ship their EUROPEAN BARE branded cosmetics mixed together with Bare Escentuals' own BAREMINERALS branded cosmetics, which practice is likely to confuse consumers further as to the connection between Defendants and Plaintiff and as to the source of Defendants' products.

35. Defendants go so far as to use Bare Escentuals' own promotional materials to market Defendants' products. Defendants' advertising prominently features images of Bare Escentuals' own instruction materials in a photograph that features cosmetic products indistinguishable from Bare Escentuals' products. Defendants even offer for sale a "starter set" consisting of EUROPEAN BARE-branded products *packaged together with* the "Bare Escentuals / i.d. bareMinerals HOW-TO DVD." Defendants emphasize that the DVD features "Bare Escentuals' President and CEO Leslie Blodgett." Defendants repeatedly advertise their products in this fashion, including by posting pages to the popular shopping websites Amazon.com and eBay. Exhibit P is an example of Defendants' advertising.

36. Defendants use the marks EUROPEAN BARE, EUROPEAN BARE MINERALS, BARE MINERALS, MINERAL VEIL, and SWIRL TAP BUFF on cosmetics in a way likely to cause confusion, mistake, or deception as to the origin, sponsorship, or affiliation of their goods and to cause the erroneous impression that Bare Escentuals and its products are affiliated, connected, or associated with Defendants. That damages Bare Escentuals and infringes Bare Escentuals' trademarks identified in this Complaint.

37. Bare Escentuals believes, and therefore alleges, that numerous consumers have purchased Defendants' products under the mistaken belief that they were purchasing Bare Escentuals' products.

38. Defendants' conduct described above has injured Bare Escentuals in its business and property and threatens to continue to injure Bare Escentuals unless enjoined by this Court. Bare Escentuals believes, and therefore alleges, that Defendants' conduct has also deprived Bare Escentuals of money that rightfully belongs to it.

39. Defendants, by use of the marks EUROPEAN BARE, EUROPEAN BARE MINERALS, and BARE MINERALS, have commenced use of marks and a trade name in commerce that has caused or is likely to cause dilution by blurring or dilution by tarnishment of Bare Escentuals' famous and distinctive BARE ESCENTUALS and BAREMINERALS marks. Defendant willfully intended to trade on the recognition of Plaintiffs' BARE ESCENTUALS and BAREMINERALS marks and willfully intended to harm Bare Escentuals' reputation. Defendants' actions, which were intentional and without Plaintiff's permission, began after Plaintiffs' BARE ESCENTUALS and BAREMINERALS became famous and distinctive from other marks throughout the United States. Defendants have damaged Bare Escentuals and consumers by their misconduct.

40. Defendants and Bare Escentuals have exchanged several communications regarding the matters described above. On or about May 7, 2007, counsel for Bare Escentuals sent a letter to Defendant European Bare, describing Bare Escentuals' rights in its trademarks and brands and demanding that European Bare permanently cease use of the marks EUROPEAN BARE and EUROPEAN BARE MINERALS. A true and correct copy of this letter is Exhibit R.

41. Defendants did not respond in writing to this letter. However, counsel for Bare Escentuals spoke to Defendant Leffler by phone in or around June of 2007. During this conversation, Ms. Leffler agreed to remove all references to EUROPEAN BARE MINERALS, from her web site. Despite Ms. Leffler's representations, Defendants did not remove these references, but instead continued their use of the EUROPEAN BARE MINERALS and BARE MINERALS marks on their website and on new web pages posted to eBay and elsewhere.

42. Defendants' own marketing and its communications with Bare Escentuals demonstrate that Defendants had full knowledge of Bare Escentuals and its brand. As a consequence, Defendants' wrongful conduct described above is willful and malicious. This is an

1 “exceptional” case within the meaning of section 35 of the Lanham Act, 15 U.S.C. §1117.

2 **FIRST CAUSE OF ACTION**
3 **Infringement of Federally Registered Trademarks**
4 **(Lanham Act § 32, 15 U.S.C. §1114)**

4 43. Bare Escentuals incorporates all paragraphs above by reference.

5 44. Defendants, through the conduct described above and with knowledge that such
6 imitation is intended to be used to cause confusion, or to cause mistake, or to deceive, have infringed
7 and continue to infringe upon Bare Escentuals’ federally registered trademarks identified above. As
8 a consequence of Defendants’ infringements, Bare Escentuals is entitled to relief as set forth below.

9 **SECOND CAUSE OF ACTION**
10 **False Designation of Origin/Trademark Infringement In**
11 **Violation of Lanham Act §43(a), 15 U.S.C. § 1125(a)**

11 45. Bare Escentuals incorporates all paragraphs above by reference.

12 46. Defendants, through the conduct described above, in connection with their goods and
13 services, have used and continue to use words, names, terms, marks, symbols, devices, false
14 designations of origin, false and misleading descriptions, and representations of facts which are
15 likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or
16 association of Defendants with Bare Escentuals, or as to the origin, sponsorship, or approval of
17 Defendants’ goods, services, or commercial activities by Bare Escentuals. As a consequence of
18 Defendants’ misconduct, Bare Escentuals is entitled to relief as set forth below.

19 **THIRD CAUSE OF ACTION**
20 **Trademark Dilution under Federal Law**
21 **(Lanham Act § 43(c), 15 U.S.C. § 1125(c))**

21 47. Bare Escentuals incorporates all paragraphs above by reference.

22 48. Defendants first made, and continue to make, commercial use of the EUROPEAN
23 BARE, EUROPEAN BARE MINERALS, and BARE MINERALS brands in marketing, promoting,
24 and delivering their products in interstate commerce, after Plaintiffs’ BARE ESCENTUALS and
25 BAREMINERALS marks became distinctive and famous.

26 49. Defendants, through the conduct and violations described above, are likely to dilute
27 the distinctive quality of Plaintiffs’ famous and distinctive BARE ESCENTUALS and
28 BAREMINERALS trademarks by blurring and tarnishment, and to make those marks less able to

1 identify and distinguish goods and services. Defendants are also likely to injure the business
2 reputation of Bare Escentuals with respect to those marks. Defendants have intended to cause
3 dilution of Bare Escentuals' marks and violate its rights under the Lanham Act.

4 50. As a consequence of Defendants' violations, Bare Escentuals is entitled to relief as set
5 forth below.

6 **FOURTH CAUSE OF ACTION**
7 **Trademark Dilution Under California Law**
8 **(California Business & Professions Code Section 14247)**

9 51. Bare Escentuals incorporates all paragraphs above by reference.

10 52. Defendant have made, and continue to make, commercial use of the EUROPEAN
11 BARE, EUROPEAN BARE MINERALS, and BARE MINERALS brands in marketing, promoting,
12 and delivering its products in commerce after the BARE ESCENTUALS and BAREMINERALS
13 marks became distinctive and famous.

14 53. Defendants, through the conduct and violations described above, are likely to dilute
15 the distinctive quality of Plaintiffs' BARE ESCENTUALS and BAREMINERALS trademarks.
16 Defendants are also likely to injure the business reputation of Bare Escentuals with respect to those
17 marks.

18 54. As a consequence of Defendants' violations, Bare Escentuals is entitled to relief as set
19 forth below.

20 **FIFTH CAUSE OF ACTION**
21 **Trademark Infringement And Unfair**
22 **Competition Under California Common Law**

23 55. Bare Escentuals incorporates all paragraphs above by reference.

24 56. Defendants, through the conduct and violations described above, have engaged in
25 trademark infringement and unfair competition against Bare Escentuals under the common law.

26 57. As a consequence of Defendants' violations, Bare Escentuals is entitled to relief as set
27 forth below.

28 **SIXTH CAUSE OF ACTION**
Unlawful Business Practices and False Advertising
(California Business & Professions Code Sections 17200 and 17500)

58. Bare Escentuals incorporates all paragraphs above by reference.

59. Defendants, through the conduct and violations described above, have engaged in, engage in, and propose to engage in unlawful business practices and false advertising in violation of California Business and Professions Code §§ 17200 and 17500. As a consequence of Defendants' violations, Bare Escentuals is entitled to the relief as set forth below.

SEVENTH CAUSE OF ACTION
Declaratory Relief and Rectification of the Trademark Register

60. Bare Escentuals incorporates all paragraphs above by reference.

61. Defendants' EUROPEAN BARE mark, registered as No. 3,236,902 with the U.S. Patent and Trademark Office, so resembles Bare Escentuals' marks registered in the Patent and Trademark Office, as to be likely, when used on or in connection with the goods and services of Defendants, to cause confusion, or to cause mistake, or to deceive.

62. Bare Escentuals will suffer injury if Defendants' infringing mark is permitted to remain on the register. There is a real and substantial controversy arising from Defendants' use and registration of EUROPEAN BARE, entitling Bare Escentuals to a declaration that Defendants are not entitled to registration of the EUROPEAN BARE mark, and to an order directing the Director of the Patent and Trademark Office to cancel registration of the mark and otherwise to rectify the register.

63. Bare Escentuals is entitled to the relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Bare Escentuals prays that the Court enter judgment as follows:

A. Preliminarily and permanently enjoining Defendants, and all persons in active concert or participation with them,

- from use of names or marks confusingly similar to those of Bare Escentuals;
- from false, misleading, or confusing advertising relating to Defendants' and Bare Escentuals' respective cosmetics;
- from acts that dilute the marks or otherwise tarnish the reputation of Bare Escentuals;

- from representing by any means whatsoever, directly or indirectly, that Defendants and their products are associated in any way with Bare Escentuals or its products or services, and from otherwise taking any other action likely to cause confusion, mistake, or deception;
- from doing any other acts calculated or likely to cause confusion or mistake in the mind of the public or to lead others to believe that Defendants' products or services come from or are the products of Bare Escentuals, or are somehow sponsored by or associated with Bare Escentuals; and
- from otherwise unfairly competing with Bare Escentuals or misappropriating Bare Escentuals' reputation and goodwill;

B. Ordering Defendants to deliver up for destruction all commercials, labels, signs, prints, packages, wrappers, receptacles, advertisements, electronic files, and other articles bearing the infringing mark, and all software templates, plates, molds, matrices, or other means of making them that are in their possession or under its control;

C. Awarding Bare Escentuals its actual damages and Defendants unjust and unlawful profits arising from Defendants' misconduct;

D. Ordering restitution to Bare Escentuals of Defendants' unjust enrichment and unlawful gains to the detriment of Bare Escentuals;

E. Awarding Bare Escentuals additional damages and profits of three times the actual damages and profits, together with attorneys' fees;

F. Awarding Bare Escentuals exemplary damages in an amount to be determined in the enlightened conscience of the jury;

G. Declaring that Defendants are not entitled to federal registration of the mark EUROPEAN BARE and ordering the Director of the United States Patent and Trademark Office to cancel Registration No. 3,236,902;

H. Awarding Bare Escentuals costs of suit; and

I. Granting such other relief as the Court may determine just and equitable.

DEMAND FOR JURY TRIAL

Bare Escentuals demands trial by jury of all issues triable by a jury.

Dated: 4 April 2011

WINSTON & STRAWN LLP

By: Andrew P. Bridges
Andrew P. Bridges
Jennifer A. Golinveaux
Elisabeth A. Derby
Attorneys for Plaintiff
BARE ESCENTUALS BEAUTY, INC.